



Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

8 September 2008

Mr Peter Hallahan,

Inquiry into the effectiveness of the Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality

The Victorian Equal Opportunity and Human Rights Commission (the Commission) is Victoria's leading human rights body, responsible for administering the *Equal Opportunity Act 1995* (Vic) (the EO Act) and the *Racial and Religious Tolerance Act 2001* (Vic) promoting the rights of all to equality and freedom from discrimination, sexual harassment and vilification. Under these Acts the Commission:

- provides a free, impartial, accessible, confidential complaint handling service
- works with communities, business and government through partnerships, consultation, advice and education
- identifies and addresses systemic discrimination
- undertakes research and policy development

The Commission also undertakes specific functions in relation to the Victorian Charter of Human Rights and Responsibilities.

The Commission welcomes this inquiry into the effectiveness of the SDA and hopes that it is the beginning of a consultative process aimed at modernising the SDA to better eliminate discrimination and achieve gender equality. In this brief letter to the Senate Committee's the Commission seeks to highlight recent developments in Victoria that may assist and inform the Committee in relation to matters identified in the terms of reference for the current inquiry. The Commission also seeks to raise specific issues regarding the coverage of the SDA in relation to discrimination on the basis of family responsibilities and sexual orientation.

In Victoria the State Government has recently undertaken a review of the EOA to investigate how best to eliminate discrimination and promote equal opportunity through reforms to the modernise the EOA. The Equal Opportunity Act Review Final Report – *An Equality Act for a fairer Victoria* was released on 31 July 2008. The Commission contributed two substantial submissions to the EOA review which can be found on our website for the Senate Committees information.

<http://www.humanrightscommission.vic.gov.au/projects%20and%20initiatives/ea%20review.asp>

The Commission has previously noted in a submission to HREOC's *Striking the Balance* discussion paper, the limitations of the SDA in protecting men from discrimination whom may have family responsibilities. Specifically, men are limited in their ability to lodge complaints of discrimination on the basis of family responsibilities as they are not able to argue as women have that as a sex they are more likely to bear caring or parenting obligations. Similarly the limitations of the SDA family responsibilities provisions do not adequately protect women from discrimination during their employment.

Recently in Victoria the Equal Opportunity Act 1995 (Vic) was amended to clarify an employers obligation to accommodate reasonable requests for flexible working arrangements (Equal Opportunity Amendment (Family Responsibilities) Act 2008 (Vic). The amendments came into effect on 1 September 2008. These new provisions apply to employees who have parental or carer responsibilities regardless of their gender.

An employer is required to consider all relevant facts and circumstances in determining whether to accommodate an employee's family or carer responsibilities. This does not mean that an employer is required to accommodate every request for changes to existing work arrangements, but it does mean that an employer must not unreasonably refuse to accommodate the responsibilities that an employee has as a parent or carer. Each situation will depend on the facts and circumstances and the Commission has published guidelines to assist employers to consider and respond to requests for flexible working arrangements. A copy of the guidelines can be found at:

<http://www.humanrightscommission.vic.gov.au/publications/employee%20guidelines/>

Whilst most state and territories provide some degree of protection from discrimination on the ground of sexual orientation or sexual preference, at the Federal level there are almost no effective avenues of redress for people who experience discrimination on the basis of their sexual orientation. The *Human Rights and Equal Opportunity Commission Act 1986* provides an extremely limited avenue for redress for discrimination on the ground of "sexual preference", but only in relation to Commonwealth bodies and agencies and in employment.

In the Commission's opinion what is necessary is the expansion and enhancement of the Federal avenue of civil redress for people who experience discrimination on the grounds of sexual orientation. The Commission has suggested in the past¹ two options for prohibiting discrimination on the ground of sexual orientation in order of preference:

1. First, introduction of an Act solely dedicated to the prohibition of discrimination on the ground of sexual orientation²; a dedicated Act will act as a powerful

¹ Submission of the Equal Opportunity Commission of Victoria to HREOC's inquiry – same sex: same entitlements, May 2006


² The Commission prefers to term 'sexual orientation' over 'sexuality' and 'sexual preference' because it semantically best represents the experience of being gay, lesbian or bisexual. The term 'sexual orientation' is also used in the *Equal Opportunity Act* (Vic). The term sexuality pertains to the recognition or emphasis of sex whereas discrimination suffered by gay, lesbian or bisexual people mostly relates to the direction of a person's emotional or sexual feelings, which is what sexual orientation emphasises, and why it is a preferred term. The term 'sexual preference' implies that homosexuality, lesbianism and bisexuality are a choice – with the reactionary implication that they can therefore be changed; an implication which may not accord with the life experiences gay, lesbian or bisexual people. Therefore the

statement to the community of the acceptance, respect and recognition of gay, lesbian and bisexual people and their relationships.

2. Alternatively, amendments to the Sex Discrimination Act to incorporate a ground of sexual orientation, to enable greater protection for people who experience discrimination on this ground in all public areas of their lives and more effective enforceable remedies.

Thank you for this opportunity to contribute to the present inquiry.

Yours sincerely



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